

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff

DECISION and ORDER

-VS-

11-CR-6083

JAMES MCAULEY, JR.,

Defendant

This case was referred by order of the undersigned, docketed May 2, 2011, ECF No. 2, to Magistrate Judge Marian W. Payson, pursuant to 28 U.S.C. § 636(b)(1)(A)-(B). On July 18, 2012, Defendant filed an omnibus motion, ECF No. 234, seeking *inter alia* dismissal of Counts 1 and 3 of the superseding indictment based upon insufficiency and double jeopardy and suppression of statements, jailhouse recordings, and tangible evidence.

On October 12, 2012, December 3, 2012, May 9, 2013, and May 23, 2013, an evidentiary hearing was held before Magistrate Judge Payson on Defendant's applications to suppress statements, jailhouse recordings, and tangible evidence, ECF No. 303, No. 343, No. 410, and No. 411, and transcripts of the proceedings were filed on November 8, 2012, ECF No. 314; on January 2, 2012, ECF No. 344; and on July 23, 2013, ECF No. 417 and No. 418. On January 17, 2014, Magistrate Judge Payson filed a Report and Recommendation ("R&R"), ECF No. 462, recommending that Defendant's application to dismiss the superseding indictment based upon insufficiency and double jeopardy; his application to suppress jailhouse recordings; and his application to suppress tangible evidence seized on August 23, 2005 all be denied. However, she recommended that Defendant's application to suppress statements made during an unlawful search of his person

on November 19, 2003 be granted. Additionally, in this R&R, ECF No. 462, she directed that the evidentiary hearing continue on February 4, 2014, for the purpose of further developing the record on Defendant's motion to suppress the methamphetamine seized on November 19, 2003.¹

The hearing was in fact continued as scheduled, ECF No. 475, and a transcript of the proceeding was filed on February 6, 2014, ECF No. 472. On March 19, 2014, Magistrate Judge Payson filed an R&R, ECF No. 501, recommending that Defendant's motion to suppress the methamphetamine seized on November 19, 2003, be granted. She also clarified that she recommended that Defendant's application to suppress any statements he made on November 19, 2003 during or subsequent to the search of his person and subsequent to his arrest also be granted.

On April 17, 2014, Defendant filed objections, ECF No. 510, to Magistrate Judge Payson's R&R's, ECF No. 462, and as amended, ECF No. 471, and ECF No. 501. Specifically, Defendant objected to Magistrate Judge Payson's recommendation that his application to dismiss the superseding indictment on double jeopardy grounds be denied and to her recommendation that his application to suppress evidence seized on August 23, 2005 be denied.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the R&R to which objections have been made. Upon a *de novo* review of the R&Rs, including the transcripts of the evidentiary hearing held and exhibits received, Court accepts Magistrate Judge Payson's proposed findings and recommendations, ECF No. 462, and as amended, ECF No. 471, and ECF No. 501.

¹On February 4, 2014, Magistrate Judge Payson filed an Amended R&R with respect to these recommendations, ECF No. 471.

Accordingly, for the reasons set forth in Magistrate Judge Payson's R&Rs, ECF No. 462, and as amended, ECF No. 471, and ECF No. 501, Defendant's application to dismiss Counts 1 and 3 of the superseding indictment based upon insufficiency and double jeopardy is denied; his application to suppress jailhouse recordings is denied; and his application to suppress tangible evidence seized on August 23, 2005, is denied. His application to suppress the methamphetamine seized on November 19, 2003 is granted, as is his application to suppress any statements he made on November 19, 2003, during or subsequent to the search of his person and subsequent to his arrest.

IT IS SO ORDERED.

Dated: Rochester, New York
February 10, 2015

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge